UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA, :

09 Cr. 722 (MGC)

- v - :

PAUL GREENWOOD, :
STEPHEN WALSH,
:
Defendants.

- X

COMMODITY FUTURES TRADING :
COMMISSION,
:
- v -

09 Civ. 1749 (GBD)

:
STEPHEN WALSH, ET AL.,
:
Defendants.

- X

SECURITIES AND EXCHANGE :
COMMISSION,
:
- v -

09 Civ. 1750 (GBD)

:
WG TRADING INVESTORS, L.P., ET AL.,
:
Defendants.

- X

REPLY MEMORANDUM OF THE UNITED STATES OF AMERICA

PREET BHARARA
United States Attorney for the
Southern District of New York

John J. O'Donnell
Marissa Molé
Assistant United States Attorneys
Of Counsel

PRELIMINARY STATEMENT

The Government respectfully submits this reply memorandum in response to the Defendant Stephen Walsh's ("Walsh") Pre-Hearing Memorandum and Opposition To The Government's Motion to Quash Subpoenas ("Defense Mem."). Presently pending before the Court are two legal issues. First, is a defendant precluded from compelling cooperating witnesses to testify at a *Monsanto* hearing where the Second Circuit expressly stated that its ruling precludes the exposure of cooperating witnesses. *United States* v. *Monsanto*, 924 F.2d 1186, 1198 (2d Cir. 1991)(*en banc*). Second, is a defendant's interest in real property traceable to a fraud where the defendant misappropriated investor funds to satisfy his obligations under a separation and divorce agreement and, in exchange, received, among other things, sole ownership of the real property at issue. The Government submits that both of these questions should be answered in the affirmative.

These issues were addressed at a Conference on March 23, 2011, at which time the Court fixed a briefing schedule and set a Conference for April 15, 2011. The Government submits that the resolution of these legal issues in advance of the *Monsanto* hearing will significantly aid the progress of this case and will be of tremendous assistance in framing the issues for the hearing.

ARGUMENT

I. The Defendant Cannot Use The Monsanto Hearing As A Dress Rehearsal For The Trial

The sole issue at the *Monsanto* hearing is whether defendant Stephen Walsh ("Walsh") may use the proceeds of the sale of his residence at 7 Half Moon Lane, Sands Point, New York ("Half Moon Lane Home") to pay his attorneys' fees in the criminal case. This Court (Cedarbaum and Daniels, D.JJ.), previously held that Walsh could use $900,000 of the proceeds of the sale of the Half Moon Lane Home to pay his attorneys' fees, unless the Government established at a *Monsanto* hearing (a) probable cause to believe that Walsh had committed the fraud charged in the indictment; and (b) that the Half Moon Lane Home is properly restrained because his interest in the house is traceable to the fraud. Because the Court limited Walsh's recovery to a fixed amount ($900,000), the Government chose not to pursue the hearing. Since that ruling, the Half Moon Lane Home has been sold for approximately $4 million and the defense has applied to the Court to make all of the net proceeds from the sale of the Half Moon Lane Home (approximately $3.8 million) available to pay Walsh's legal fees and expenses in the criminal case. Because the Government believes that the amount sought for fees is unreasonable and that the proceeds of the sale of the Half Moon Lane Home should be preserved for the benefit of the victims, the Government has exercised its right to have a *Monsanto* hearing to maintain the asset freeze on the net proceeds in excess of the $900,000 already ordered for the defense.

Prior to the scheduled date for the hearing, the Government advised the defense that it would call Federal Bureau of Investigation ("FBI") Special Agent James C. Barnacle, Jr., who was involved in the investigation, to summarize the Government's proof through hearsay testimony. The Government also identified the exhibits it intended to offer and provided 3500 material for Agent Barnacle. Thereafter, the defense served subpoenas on Paul Greenwood ("Greenwood), Deborah Duffy ("Duffy"), and Brick Kane ("Kane"). Greenwood and Duffy have each pleaded guilty, pursuant to cooperation agreements, to criminal charges relating to the fraud at WG Trading Company L.P. ("WG Trading"), WG Trading Investors LP ("WG Investors"), and related entities controlled by Greenwood and Walsh. Kane is the Chief Operating Officer of Robb Evans & Co., L.L.C., which has been appointed by Judge Daniels to serve as the Court-appointed receiver over WG Trading, WG Investors, and the related entities (the "Receiver").

The Government moved to quash the subpoenas on the grounds that: (1) *Monsanto* precluded the defendant from serving subpoenas on the Government's cooperating witnesses; and (2) the defense had not established the relevance of the testimony that it seeks to elicit from Kane.

As the defense recognizes, the issue of whether the defendant may subpoena the cooperating witnesses boils down to the interpretation of *Monsanto*. The defense argues that *Monsanto* requires a full-blown adversarial hearing at which the defendant can subpoena and cross-examine the Government's cooperating witnesses. (Defense Mem. 8-11). The defense misapprehends the nature of the hearing set forth in *Monsanto* and improperly seeks to convert the *Monsanto* hearing into a preview of the trial.

In *United States* v. *Monsanto*, 924 F.2d 1186, the Second Circuit concluded that, in a case involving a criminal asset freeze, "the fifth and sixth amendments, considered in combination, require an adversary, post-restraint, pretrial hearing as to probable cause that (a) the defendant committed crimes that provide a basis for forfeiture, and (b) the properties specified as forfeitable in the indictment are properly forfeitable, to continue a restraint of assets (i) needed to retain counsel of choice and (ii) ordered ex parte." 924 F.2d at 1203.

By its terms, the scope of the hearing is quite limited. At the hearing, the Government is only required to demonstrate "probable cause" that the crime has been committed and that the restrained asset is properly forfeitable (or, in this case, traceable to the fraud). This burden is not heavy. Indeed, the Second Circuit has stated that "[p]robable cause is established if the government can show that it has reasonable grounds, more than mere suspicion, to believe that the property is subject to forfeiture." *In re the Seizure of All Funds in Accounts in the Names Registry Publishing*, 68 F.3d 577, 580 (2d Cir. 1995) (*quoting Marine Midland Bank, N.A.* v. *United States*, 11 F.3d 1119, 1126 (2d Cir.1993)). As this Court observed at the March 23, 2011 Conference, the Government routinely demonstrates probable cause through an agent's sworn statements that recite what he or she has learned from witnesses or from the review of documents. (March 23, 2011 Tr. 6). Indeed, in this case, Magistrate Judge Eton found probable cause based upon Agent Barnacle's complaint, and a Grand Jury found probable cause (and returned an indictment) based upon Agent Barnacle's testimony. We have little doubt that this Court will find that there is "more than mere suspicion" to believe that Walsh committed the charged crimes after Agent Barnacle testifies at the *Monsanto* hearing.

The defense disregards the critical language in *Monsanto* where the Court stressed that its determination that the Rules of Evidence not apply at the probable cause hearing thus "precluding the unwarranted exposure of Government witnesses." *Monsanto*, 924 F.2d at 1198, 1199. Rather, the defense relies upon the *Monsanto* court's statement that the Government cannot rely upon the fact of a Grand Jury indictment to establish probable cause, as a basis for its efforts to enlarge the hearing. That reliance is misplaced. The court in *Monsanto* rejected the Government's argument that the indictment *by itself* must be regarded as conclusively establishing probable cause that the defendant committed the charged offense, finding that the grand jury's determinations of probable cause can be reexamined at the hearing. 924 F.2d at

1203. However, by holding that hearsay is admissible at the hearing, 924 F.2d at 1198, 1203, the Second Circuit specifically framed a limited hearing that would be similar to a grand jury proceeding, *i.e.*, the Government would call an agent to describe the results of his investigation, but the Court would determine whether the evidence presented established probable cause. *See also United States* v. *Daccarett*, 6 F.3d 37, 56 (2d Cir. 1991) (in a forfeiture context, "[a] finding of probable cause may be based on hearsay, even hearsay from confidential informants, or circumstantial evidence, particularly in cases involving bank accounts, money, or other fungible assets")(citations omitted); *Oyekoya* v. *United States*, 175 F. Supp. 2d 522, 525 (S.D.N.Y. 2001) (a finding of probable cause may be based on hearsay and circumstantial evidence).

The defense also relies upon a statement in *Monsanto* that the evidentiary hearing the Court was envisioning should be governed by the procedures set forth in Federal Rule of Civil Procedure 65 as support for the defense efforts to enlarge the scope of the hearing. (Defense Mem. 7). This argument does not support the effort to subpoena the cooperating witnesses. The Second Circuit has recently confirmed that a preliminary injunction hearing under Rule 65 is less formal than a full-blown trial and that a district court may rely upon hearsay evidence in determining whether a preliminary injunction is warranted. *Mullins* v. *City of New York*, 626 F.3d 47, 51-52 (2d Cir. 2010). The Court stated:

> We agree with these courts and conclude that hearsay evidence may be considered by a district court in determining whether to grant a preliminary injunction. The admissibility of hearsay under the Federal Rules of Evidence goes to weight, not preclusion, at the preliminary injunction stage. To hold otherwise would be at odds with the summary nature of the remedy and would undermine the ability of courts to provide timely provisional relief.

Id. at 52 (citing cases); see also March 23, 2011 Tr. 30 (observing that affidavits are routinely used at preliminary injunction hearings). Thus, the rule relied upon by the defense supports the Government's position that it may make its showing though the testimony of Agent Barnacle concerning the results of his investigation.

Contrary to the defendant's protests, the scope of the hearing proposed by the Government does not render it a "one-sided affair." The hearing envisioned in *Monsanto* provides significant procedural benefits to the defendant. First, the hearing is in open court and the defendant may be present. Second, the Court must reconsider the question of probable cause, and is not bound by the determination of the Grand Jury. 924 F.2d at 1196-97, 1203. Third, the defendant is free to cross-examine the agent and make arguments as to why the Government has failed to meet its burden. Fourth, the defendant can testify and call witnesses (other than the Government's cooperating witnesses) on his behalf.[1] What *Monsanto* does not allow, however, is for the defense to subpoena the Government's cooperating witnesses solely for impeachment purposes.

As the Court requested, we have attempted to identify other *Monsanto* hearings that have been held in this district. We have located a case before Judge Patterson where such a hearing was held, *United States* v. *Jon Okenfus*, 96 Cr. 565 (RPP). On July 31, 1996, Jon Okenfus, and others, were charged in a superseding indictment with narcotics conspiracy, marijuana distribution, and firearms violations in connection with their participation in a largescale marijuana distribution operation. The superseding indictment included forfeiture allegations. On August 6, 1996, Judge Patterson entered a an order restraining certain real and personal properties of Okenfus believed to constitute and/or derive from proceeds of narcotics activity. Among other things, the order restrained funds that had been transferred by Okenfus from a bank account that he controlled to his attorney for attorney's fees, which funds were alleged to be drug proceeds.[2] The Government consented to a *Monsanto* hearing, which took place over a period of days from September 12, 1996 to September 17, 1996. At the hearing, the Government called a DEA Special Agent (who summarized the Government's proof through hearsay testimony) and the defense called an associate of defense counsel (who testified about her interviews with certain individuals). The issue before this Court, namely, whether the defense can compel the testimony of the Government's cooperating witnesses at a *Monsanto* hearing, was extensively litigated and debated before Judge Patterson. (9/4/1996 Tr. 20-30; 9/10/1996 Tr. 2-17, 22-29, 32-38; 9/12/1996 Tr. 4-6, 93-94; 9/13/1996 Tr. 126-37, 186-87; 9/17/1996 Tr. 206-18, 275-77, 284). At the end, however, the hearing proceeded with Government offering only the agent's testimony and Judge Patterson expressly declined to order the production of the cooperating witnesses.[3] (9/17/1996 Tr. 284).

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[1] We note that Walsh has submitted declarations in connection with the underlying motion setting forth his version of how he and his then-wife originally acquired the Half Moon Lane Home. The Government does not know whether Walsh intends to testify at the hearing, and therefore be subject to cross-examination, or remain silent and rely upon his declarations. On April 6, 2011, the Government requested that the defense provide a witness list, an exhibit list, and 3500 material for the defense witnesses by April 15, 2011.

It follows that the defendant's subpoenas to Greenwood and Duffy should be quashed. With respect to the subpoena to Kane, the defense should articulate the relevance of the testimony it seeks to elicit.

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[2] On August 9 and August 16, 1996, the restraining orders were amended to reflect certain transfers of the funds from the attorney's account and because funds from an unrelated client were being restrained by the order.

[3] It appears from the docket sheet that Judge Patterson never actually ruled on the *Monsanto* issues before him. We understand that the matter was eventually resolved through an agreement of the parties. Because the material related to this matter are voluminous, we are not attaching them as exhibits. We are simultaneously providing the Court and the defense with binders containing relevant transcripts and materials.

II. Walsh's Acquisition Of The Half Moon Lane Home Pursuant To The Separation Agreement

As discussed at the March 23, 2011 Conference, the Government intends to establish that Walsh's interest in the Half Moon Lane Home is traceable to the fraud because Walsh directed that $6.1 million in funds be transferred to directly out of the WG Investors bank account to his ex-wife as part of the divorce settlement in which Walsh obtained full ownership of that house. (March 23, 2011 Tr. 22-24, 34). The facts concerning this issue cannot seriously be disputed. The terms of the divorce settlement are set forth in an unambiguous written agreement and the funds were transferred directly from the WG Investors bank account to Walsh's former wife. The parties have raised this issue at this juncture because a ruling by the Court in advance of the hearing could materially impact the scope of the hearing.

On November 1, 2006, Walsh and his former wife Janet Walsh, now know as Janet Schaberg ("Schaberg"), entered into a "Stipulation of Settlement and Agreement" (the "Agreement"), which was intended to confirm their separation, to settle all claims raised in a pending divorce action, and to settle and adjust all issues between them, including all rights to support and maintenance and their respective rights in all property owned by either of them. (A copy of the Agreement is attached to the January 14, 2010 Declaration of Brick Kane ("Kane Dec.") at Exhibit G).

The Agreement was incorporated but not merged into the judgment of divorce and is intended to be independently binding on both parties. (Agreement ¶¶ 12.1 to 12.3). Various recitals and other provisions of the Agreement confirm that (1) neither party was coerced or pressured into executing the Agreement (Agreement Art. XIII); (2) each party was represented by independent counsel (*id.* at Art. XIII and XVI); (3) the Agreement is the "complete and entire Agreement of the parties" (*id.* at ¶ 18.3); and (4) each of the respective rights and obligations of the parties were independently enforceable. (*Id.* at ¶ 18.9). The Agreement is governed by New York law. (*Id.* at ¶ 18.4).

As the defense concedes, the Agreement provides for the equitable distribution of the various assets accumulated by the parties during their marriage and resolves all of their financial issues. The assets included real property (Agreement ¶¶ 4.5 to 4.7), personal property and household effects (Agreement ¶¶ 3.1 to 3.6), bank accounts (*id.* at ¶ 4.13), automobiles (*id.* at ¶ 4.15), annuities and life insurance policies (*id.* at ¶ 4.13, 7.2 to 7.6), and each of their respective business interests. (*Id.* at ¶ 4.8 to 4.12). The Agreement generally provided that neither party would pay maintenance to the other, but that Walsh would provide medical insurance for Schaberg and would maintain various life insurance policies and a life insurance trust for the benefit of Schaberg. (Agreement ¶¶ 5.1, 5.2, 7.1 to 7.6). In light of the division of assets, each party released the other from any and all future claims that may arise as a consequence of their marital relationship. (Agreement ¶¶ 4.3, 4.4, 10.1 to 10.4, Art. IX, XI). *See generally CFTC v. Walsh*, 618 F.3d 218, 222 (2d Cir. 2010)(describing terms of the agreement).

Walsh represented that his business interests included the following: (1) an interest in WG Trading Investors LP equal to 50% of the net profit; (2) a 37% interest in WGQ LLC; (3) a .16% interest in WGI, LLC, and a 94% interest in SAM Group LLC. (Agreement ¶ 4.8). Pursuant to Section 4.10 of the Agreement, Walsh agreed to pay Schaberg, over time, a distributive award of $12,500,000 (Agreement ¶ 4.10(a)), and agreed to take various measures to guarantee the payment of the distributive award. These provisions included execution of a promissory note and a confession of judgment for the unpaid balance upon default (Agreement ¶ 4.10(d)), an agreement that the distributive award payment would not be dischargeable in bankruptcy (*id.* at ¶ 4.10(e)), the acquisition of a life insurance policy to ensure that distributive award would be paid if he died (*id.* at ¶ 7.1), and a mortgage on the Half Moon Lane Home for $25,000. (Agreement ¶ 4.5(e)).

With respect to the Half Moon Lane Home, the Agreement provided that "[Schaberg] is presently the owner of a house located at 7 Half Moon Lane, Sands Point, New York (the 'Marital Residence')" and that "[Schaberg] will convey all of her right, title and interest in the Marital property to [Walsh]." (Agreement ¶¶ 4.5(a)-(b)).[4] Significantly, as noted above, the Agreement also provided that "as partial security for [Walsh's] obligation to pay [Schaberg] pursuant to paragraph 4.10 'The Wife's Distributive Award and The Husband's Business Interests', in addition to the security provided in Paragraph 4.10(d), [Walsh] agrees to execute and deliver, simultaneously with the execution of this Agreement, a mortgage and mortgage note in favor of [Schaberg] (the 'Mortgage') in the sum of $25,000 on the Marital Residence." (Agreement ¶ 4.5(e)).

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[4] The Government does not disagree with Walsh's argument that, although it was titled in Schaberg's name, the Half Moon Lane Home was a joint asset under N.Y. Domestic Relations Law § 236. That circumstance is irrelevant here because "a separation agreement can serve as a conveyance from the marital estate to divorcing individuals within the meaning of New York Real Property Law § 290(3), which defines 'conveyance' to include 'every written instrument, by which any estate or interest in real property is created.'" *CFTC* v. *Walsh*, 618 F.3d at 227-28 (citing *FDIC* v. *Malin*, 802 F.2d 12, 17 (2d Cir. 1986)). Here, Walsh received sole title to the home pursuant to the Agreement in exchange for the consideration that he bestowed to Schaberg. In other words, Walsh bought out her interest in the home.

Under New York law, the terms of a separation agreement "incorporated but not merged into a judgment of divorce operate as contractual obligations binding on the parties." *Gravlin* v. *Ruppert*, 98 N.Y.2d 1, 5, 743 N.Y.S.2d 773, 775, 770 N.E.2d 561, 563 (2002). Thus, "'[a] matrimonial settlement is a contract subject to principles of contract interpretation ... [and] a court should interpret the contract in accordance with its plain and ordinary meaning.'" *Herzfeld* v. *Herzfeld*, 50 A.D.3d 851, 851, 857 N.Y.S.2d 170, 170-71 (2d Dep't 2008) (quoting *Edwards* v. *Poulmentis*, 307 A.D.2d 1051, 1052, 763 N.Y.S.2d 677 (2d Dep't 2008). The interpretation of a contract, and the determination of whether the contract is clear or ambiguous, is a matter of law for the court to determine. *See W.W.W. Associates, Inc.* v. *Giancontieri*, 77 N.Y.2d 157, 162, 566 N.E.2d 639, 642, 565 N.Y.S.2d 440, 443 (1990); *805 Third Ave. Co.* v. *M.W. Realty Assoc.*, 58 N.Y.2d 447, 451, 461 N.Y.S.2d 778, 780, 448 N.E.2d 445, 447 (1983). "[W]hen interpreting a contract, the court should arrive at a construction which will give fair meaning to all of the language employed by the parties to reach a practical interpretation of the expressions of the parties so that their reasonable expectations will be realized." *Joseph* v. *Creek & Pines*, 217 A.D.2d 534, 535, 629 N.Y.S.2d 75, 76 (2d Dep't 1995); *Partrick* v. *Guarniere*, 204 A.D.2d 702, 704, 612 N.Y.S.2d 630, 632 (2d Dep't 1994). Where a matrimonial settlement "is clear and unambiguous on its face, the parties' intent must be construed from the four corners of the agreement, and not from extrinsic evidence." *Herzfeld* v. *Herzfeld*, 50 A.D.3d at 851-852, 857 N.Y.S.2d at 171. *See also W.W.W. Associates, Inc.* v. *Giancontieri*, 77 N.Y.2d at 162, 566 N.E.2d at 642, 565 N.Y.S.2d at 443 ("A familiar and eminently sensible proposition of law is that, when parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms.") Further, it is a basic principle that a contract must be viewed as a whole. *See United States* v. *Hamdi*, 432 F.3d 115, 123 (2d Cir. 2005) (Sotomayor, CJ); *Green Point Sav. Bank* v. *Central Gardens Unit No. 1*, 279 A.D. 1078, 112 N.Y.S.2d 371 (2d Dep't 1952)(citations omitted).

The Government's contention is that by the plain language of the Agreement, Walsh received, among other things, sole ownership of the Half Moon Lane Home, in exchange for consideration consisting of, among other things, a large cash payment totaling $12.5 million. The contract, viewed as a whole, clearly provides for the transfer of ownership of the home to Walsh and at the same time requires Walsh to make large cash payments over a period of years to Schaberg. The fact that these mutual transfers are made pursuant to the same instrument proves that Walsh's acquisition of sole ownership of the home is traceable to the misappropriated investor funds transferred to Schaberg.

The Government's interpretation is buttressed by the circumstances that Walsh and Schaberg acted consistently with the Government's interpretation of the Agreement. Walsh continued to reside in the Half Moon Lane Home and Schaberg conveyed her interest in the home to Walsh. Walsh filed a deed with the Nassau County Clerk on or about December 21, 2006, after the Agreement was finalized, reflecting his sole ownership of the property.

Walsh made payments to Schaberg as required by the Agreement. The Agreement specifically required that from July 1, 2006 through June 30, 2016, Walsh would pay $1,000,000 per year in $500,000 installments in January and June of each year. (Agreement ¶ 4.10(a)(i)). Records of a brokerage account in the name of WG Trading Investors reflect that $500,000 payments to be made from WG Trading Investors to Schaberg on the following dates: January 8, 2007, July 6, 2007, January 8, 2008, July 8, 2008, and January 8, 2009, for a total of $2,500,000.

(Kane Dec. ¶ 12). These payments were made at Walsh's direction and are included in the promissory notes that Walsh signed each year in favor of WG Trading Investors.

In addition, the records of the brokerage account in the name of WG Investors further reflect that funds in the amount of $100,000 were transferred to Janet Walsh on June 1, 2006, June 30, 2006, August 3, 2006, September 1, 2006, September 29, 2006, and November 1, 2006, for a total during those time periods of $600,000. (*Id.*; *compare* Agreement ¶ 4.10(a)(iii) ("[Walsh] shall be given credit toward his obligation under subparagraph (a)(i) for payments which have been made in the sum of $100,000 on or about July 10, 2006, August 10, 2006, September 10, 2006, and October 10, 2006 and such other payments thereafter made prior to the signing of this stipulation.").[5]

Walsh argues that "the Government asks the Court to ignore the: (1) substantial detail in the divorce agreement; (2) many and varied assets and properties that were addressed in the global settlement that divorce agreement documents; and (3) policy behind New York's Domestic Relations Law." Defense Mem. 13-14. The defense seems to suggest that, because there were multiple items of consideration in the agreement, it cannot be said that the payments toward the distributive award were in consideration of the agreement by Schaberg to transfer her interest in the Half Moon Lane Home to Walsh. This argument lacks merit. "It is, literally, hornbook law that one consideration will support multiple promises." *Raghavendra* v. *Trustees of Columbia University*, 686 F. Supp. 2d 332, 345 (S.D.N.Y. 2010) (citing John P. Calamari, Joseph M. Perillo, Contracts, § 4-15 (6th ed. 2009)). Although the Agreement provided for multiple promises on both sides, when viewed as a whole, it plainly provided for Walsh to make payments to Schaberg and for Schaberg to relinquish her interest in the Half Moon Lane Home to Walsh. Walsh's argument suggests that the Court should require that the Agreement contain some express statement that the cash was in exchange for the house. That argument, however, is too narrow a reading of the contract.[6]

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[5] Nor can Walsh seriously contest the fact that he used $3 million from the WG Trading Investors account to enable Schaberg to purchase a cooperative apartment in New York City, which Schaberg received pursuant to the Agreement. On or about February 8, 2005, Walsh caused $3 million to be transferred from the WG Investors account to Schaberg's account at Merrill Lynch. Shortly thereafter, Schaberg purchased an apartment at United Nations Plaza for approximately $4 million. At her deposition, Schaberg testified that she received approximately $3 million from Walsh towards the purchase of the apartment. (Testimony of Janet Schaberg, at pages 26, 29-30 (June 9, 2009)). Pursuant to the Agreement, Janet Schaberg was given full title, right, and interest in the apartment at United Nations Plaza. (Agreement ¶ 4.7).

Moreover, in any event, there is a provision in the Agreement that directly ties the transfer of the Half Moon Lane Home to the payment of the distributive award. Paragraph 4.5 of the Agreement – which directly relates to the transfer of the Half Moon Lane Home – provides that "as partial security for [Walsh's] obligation to pay the wife pursuant to Paragraph 4.10" Walsh will agree to a mortgage on the property. (Agreement ¶ 4.5(e)(i)). This provision is extremely significant because, contrary to the defense arguments, it plainly manifests the parties' intent that the transfer of the home is in partial consideration for Walsh's payment of the distributive award. Thus, the mortgage directly ties Walsh's acquisition of the Half Moon Lane Home to his payments to Schaberg. Indeed, Schaberg's counsel asserted her rights pursuant to this mortgage in an application to Judge Daniels in connection with the Receiver's sale of the property. (A copy of a February 8, 2011 letter from Schaberg's counsel to Judge Daniels is attached as Exhibit A).

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[6] The defense attempts to ascribe significance to the fact that the payments were made pursuant to Section 4.10 of the Agreement, which is entitled "the Wife's Distributive Award and the Husband's Business Interests," for the argument that the payments were limited to the division of Walsh's business interests. This argument fails because it attempts to segregate the various promises in the Agreement instead of viewing it as a whole. Moreover, reliance on the paragraph heading is misguided because the Agreement itself provides that "[t]he paragraph headings in this Agreement are for convenience only and do not reflect any intent or agreement of the parties." (Agreement ¶ 18.1).

Based on the foregoing incontestable facts, Government expects to show that Walsh's acquisition of sole ownership of the Half Moon Lane Home in 2006 pursuant to the Agreement is traceable to the fraud because he used misappropriated investor funds to make payments to Schaberg pursuant to the terms of the Agreement. Because the Agreement is unambiguous, this issue is one of contract interpretation. In order to make the hearing more efficient, we respectfully request that the Court rule on the legal issue of contract interpretation in advance of the hearing.[7]

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[7] We note that the defense relies in part upon the circumstance that, pursuant to the Agreement, Schaberg received, among other things, sole ownership of ALZLIFE, LLC, d/b/a "Memory Concepts ("ALZLIFE"), which the defense describes as "her business" and asserts that it "had no functional relationship to the business of WG or its related entities." (Defense Mem. 15). As described above, the fact that Schaberg received consideration in addition to the cash payments does not alter the conclusion that Walsh acquired full ownership of the home in exchange for a bundle of consideration that included the cash payments. It is interesting, however, to note that the records of the WG Investors brokerage account indicate that from on or about June 9, 2005 through on or about December 12, 2005, approximately $586,087 was transferred to ALZLIFE.

CONCLUSION

For the reasons set forth above, and in its prior submissions, the Government requests that the Court find that the Government has established that there is probable cause to believe that Walsh's interest in the Half Moon Lane Home is traceable to the fraud charged in the Indictment.

Dated: New York, New York
April 8, 2011

Respectfully submitted,

PREET BHARARA
United States Attorney for the
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By: ______________________________
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EXHIBIT A

THE LAW OFFICES OF

STEVEN L. KESSLER

February 8, 2011

VIA FEDERAL EXPRESS
Hon. George B. Daniels
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10013

Re: ***Commodity Future Trading Comm'n v. Walsh, et al.***
09-CV-1749 (GBD)
Securities & Exchange Comm'n v. WG Trading Inv., L.P., et al.
09-CV-1750 (GBD)

Dear Judge Daniels:

As counsel for relief defendant Janet Schaberg in the referenced proceedings, we write regarding the letter application of Craig A. Welin, Esq., counsel for the Receiver in the referenced proceedings, dated January 28, 2011, and endorsed by this Court on February 1, 2011 ("the Letter"). The Letter authorizes the $4 million sale of real property at 7 Half Moon Lane, Sands Point, New York ("the Property"), and addresses several related issues, including one that affects Ms. Schaberg.

Ms. Schaberg has a Mortgage on the Property: Mr. Welin notes that Ms. Schaberg has a lien in the amount of $25,000.00 against the Property. Letter at 2. In fact, it is more than a mere lien. It is a first mortgage on the Property. Pursuant to the Walshes' November 1, 2006 Property Settlement, Mr. Walsh executed "a mortgage and mortgage note in favor of [Ms. Schaberg] . . . in the sum of $25,000" against the Property as additional security for his obligation to make $12.5 million in distributive award payments during a 15-year period. Property Settlement, ¶ 4.5(3)(i) ("the Mortgage and Mortgage Note"). The Mortgage was duly executed and recorded. Copies of the recorded Mortgage, the

Mortgage Note and the relevant provisions of the Property Settlement were provided to Mr. Welin in conjunction with our November 16, 2010 correspondence and copied to this Court. A copy of this correspondence and documentation is attached.

The Receiver refuses to honor the Ms. Schaberg's valid Mortgage: Although Ms. Schaberg provided Mr. Welin with the necessary documentation verifying the Mortgage and Mortgage Note, and no party has challenged the validity of the Mortgage, the Note or any of the associated legal documentation, the Receiver would not agree to release those funds to Ms. Schaberg upon the sale of the Property. Instead, the Receiver apparently secured the title company's consent to close 'subject to' the Mortgage and Mortgage Note. Thus, sale proceeds attributable to twice the amount of the Mortgage and Mortgage Note are reportedly being withheld "pending a determination of Ms. Schaberg's entitlement to the withheld funds." Letter at 2. Yet, as the attached documentation demonstrates and as the Letter (and the title company's actions) implicitly acknowledge, the Mortgage and Mortgage Note are valid.

There is no reason to delay "a determination of Ms. Schaberg's entitlement" to the proceeds of the Mortgage and Mortgage Note. For the following reasons, Ms. Schaberg's application should be granted, releasing those funds to her immediately.

The Mortgage is not restrained: As the Court is aware, the Mortgage is not encompassed by the Court's August 4, 2009 Decision and related Orders ("the Orders"), which restrained only specific accounts in Ms. Schaberg's name. The Orders do not restrain any secured interest Ms. Schaberg may have in real property owned by others. As a result, the funds represented by the Mortgage constitute neither frozen funds nor appreciation on frozen funds. Thus, the Court need not modify the Orders to grant the relief requested herein and the Court's jurisdiction to rule on this application remains unaffected by Ms. Schaberg's pending appeal from the Orders. Accordingly, there is no procedural or jurisdictional impediment to granting the relief sought herein.

The funds secured by the Mortgage are untainted: While a substantial portion of the funds involved in this proceeding are alleged to be tainted, there is a significant exception to that – the Property. On March 9, 2010, this Court,

THE CHANIN BUILDING 122 EAST 42ND STREET SUITE 606 NEW YORK, NEW YORK 10168-0699 TEL: 212-661-1500 FAX: 212-297-0777
WWW.KESSLERONFORFEITURE.COM E-mail: KESSLERONFORFEITURE@MSN.COM

together with Judge Cedarbaum, issued a Decision and Order provisionally granting the motions of defendants Walsh and Greenwood to release certain restrained funds for the payment of attorneys' fees for counsel of their choosing. *CFTC v. Walsh*, 2010 WL 882875 (S.D.N.Y. Mar. 9, 2010) (Daniels & Cedarbaum, JJ.) ("the Decision").

The Decision found that Walsh had established *prima facie* that the Property "was purchased in 1999 with proceeds from the sale of another property which he purchased prior to the time period of the alleged fraud." Specifically, the Decision confirmed – as Ms. Schaberg has repeatedly sworn in affidavits and testimony – that Ms. Schaberg and Mr. Walsh purchased their first marital residence at Arden Lane, Sands Point, New York, in 1983, for $900,000, more than a decade and a half before the alleged fraud. Then, as the Decision further finds, "[t]he Walshes sold 38 Arden Lane for approximately $4,500,000 and used $3,150,000 to purchase 7 Half Moon Lane in cash." 2010 WL 882875 at *1. Notably, the Half Moon Lane Property was titled solely in Ms. Schaberg's name from the time of its purchase in 1999 until she traded that Property for two allegedly tainted properties pursuant to her Property Settlement and divorce.

The Decision ordered the agencies to show cause by a date certain that the $900,000 in value of the Property attributable to the sale of the Arden Lane property is tainted by fraud. Otherwise, the first $900,000 netted from a court-ordered sale of the Property would be "available . . . to Walsh . . . for payment of reasonable attorneys' fees . . . if the Government cannot meet its burden . . .." 2010 WL 882875 at *3. As the Letter makes clear, the agencies have failed to meet their burden of demonstrating that at least $900,000 of the value of the Property is untainted. See Letter at 1 (noting that "up to $900,000 of the proceeds from the sale of Property [is] to be used by Walsh for payment of his attorney's fees and costs . . ..").

Thus, the parties have agreed, and the Court has found, that at least $900,000 of the value of the Property is untainted.

Ms. Schaberg's Mortgage is the senior and sole lien on the Property: The Mortgage is the senior lien on the Property, as the Property was purchased for cash and remained unmortgaged at least until Ms. Schaberg received the Mortgage in November 2006. Upon information and belief, the Mortgage remains the sole encumbrance on the Property today. Accordingly, Ms. Schaberg is entitled to be paid first, after all taxes, fees and expenses, but *before* Mr. Walsh. *See, e.g.*, CPLR 5236; *Bank Leumi Trust Co. of New York v. Liggett*, 115 A.D.2d 378, 496 N.Y.S.2d 14 (1st Dep't 1985). Thus, Ms. Schaberg's senior interest in the Property must come out of the undisputedly untainted first $900,000 in net proceeds from the sale.

Accordingly, before any funds are released to pay Mr. Walsh's attorneys, the Receiver should be directed to pay Ms. Schaberg the full amount of her Mortgage and Mortgage Note.

Under these circumstances, Ms. Schaberg respectfully requests that the Court "So Order" her request as set forth in this letter, prior to the closing on the Property.

Respectfully submitted,

Steven L. Kessler

IT IS SO ORDERED:

____________________, 2011

____
JUDGE GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE

SLK:rmaf
Encls.

cc: All counsel (via email)

THE LAW OFFICES OF

STEVEN L. KESSLER

November 16, 2010

Craig A. Welin, Esq.
Frandzel Robins Bloom & Csato, L.C.
6500 Wilshire Boulevard
17th Floor
Los Angeles, CA 90048-4820

Re: ***Commodity Futures Trading Comm'n v. Walsh, et al.***
09-CV-1749 (GBD)
Securities & Exchange Comm'n v. WG Trading Inv., L.P., et al.
09-CV-1750 (GBD)

Dear Mr. Welin:

As counsel for relief defendant Janet Schaberg in the referenced proceedings, we write regarding Ms. Schaberg's lien on the property located at 7 Half Moon Lane, Sands Point, New York, currently titled in the name of defendant Stephen Walsh. As you should be aware, pursuant to their November 1, 2006 Property Settlement, Mr. Walsh executed "a mortgage and mortgage note in favor of [Ms. Schaberg] . . . in the sum of $25,000" as additional security for his obligation to make $12.5 million in distributive award payments during a 15-year period (¶4.5(e)(i)) ("the Mortgage"). The Mortgage was duly executed and recorded and is the first lien on the Half Moon property. See enclosed documentation.

It is our understanding that the Receiver is attempting to sell the Half Moon Lane property. We request that, upon the sale thereof, you promptly forward to this office a check in the sum of $25,000, payable to the undersigned as counsel for Ms. Schaberg.

Sincerely,

Steven L. Kessler

Steven L. Kessler

SLK:rmaf
Encls.
cc: Honorable George B. Daniels

THE CHANIN BUILDING 122 EAST 42ND STREET SUITE 606 NEW YORK, NEW YORK 10168-0699 TEL: 212-661-1500 FAX: 212-297-0777
WWW.KESSLERONFORFEITURE.COM E-mail: KESSLERONFORFEITURE@MSN.COM

the income generated thereby), interests in business, intellectual property rights, life insurance policies, careers, licenses, degrees, inheritances, and tangible personal property—now in the name of the Husband and/or in her custody or control shall be the Husband's separate property, and the Wife hereby waives any claim thereto.

C. Real Property and the Co-Operative Apartment

4.5 **7 Half Moon Lane, Sands Point, NY**

(a) The WIFE is presently the owner of a house located at 7 Half Moon Lane, Sands Point, New York (the "Marital Residence"). The WIFE has previously vacated the Marital Residence and the HUSBAND shall continue to have exclusive use and occupancy of the Marital Residence and its contents.

(b) The Wife will convey all her right, title and interest in and to the Marital Residence to the Husband. Within thirty (30) days after the execution of this Agreement, the WIFE shall deliver to the HUSBAND a Bargain and Sale Deed with covenant against grantor's acts and duly executed and acknowledged in recordable form, conveying her interest in the Marital Residence to the HUSBAND. From and after the execution hereof, the WIFE shall have no right or claim with respect to the Marital Residence, its uses or proceeds in the event of a sale or other disposition thereof.

(b) The parties represent and warrant to the other that neither has placed nor caused to be placed any lien, judgment, mortgage or encumbrance on the Marital Residence. Each party hereby indemnifies and holds the other harmless against any damages occasioned by such party by reason of a breach of the foregoing warranty and representation by the other, including reasonable attorneys' fees. The parties further represent that they are unaware of any lien, judgment, mortgage or encumbrance on the Marital Residence.

(c) From and after the date hereof, and except as otherwise specifically provided herein, the HUSBAND shall be solely responsible for any and all obligations in connection with the ownership of the Marital Residence (including, without limitation, payments relating to real estate taxes, utilities charges, repairs, maintenance, and the like), and shall indemnify the WIFE from any and all liability therefor.

(d) The Husband shall be solely responsible for the payment of any transfer tax or any other fees or charges, including the cost of a real estate attorney to prepare all necessary documents to effectuate the transfer, occasioned by the transfer of title to the Marital Residence from the WIFE to the HUSBAND. The HUSBAND shall be solely responsible for any income, gains, and other taxes arising out of or in connection with any future transfer, sale, or other conveyance of the Marital Residence.

(e) (i) As partial security for the HUSBAND's obligation to pay the WIFE pursuant to Paragraph 4.10 "The Wife's Distributive Award and The Husband's Business Interests", in addition to the security provided in Paragraph 4.10(d), the HUSBAND agrees to execute and deliver, simultaneously with the execution of this Agreement, a mortgage and mortgage note in favor of the WIFE (the "Mortgage") in the sum of $25,000 on the Marital Residence which Mortgage shall be filed by the WIFE and the HUSBAND shall be responsible for all filing and recording fees in connection therewith.

(ii) In the event that the HUSBAND is selling the Marital Residence and purchasing or acquiring a new residence, the HUSBAND agrees to execute and deliver a substitute mortgage and mortgage note in favor of the Wife (the "Substitute Mortgage") under the terms and conditions identical to the Mortgage on the Marital Residence and the WIFE agrees to execute and deliver a satisfaction of mortgage to the HUSBAND for the original Mortgage on the Marital Residence. The HUSBAND shall pay any and all fees and expenses in connection with the Substitute Mortgage.

(iii) Upon the completion of the payment of the WIFE's Distributive Award as provided in Paragraph 4.10, the Note shall be deemed cancelled and the WIFE agrees to execute and deliver a satisfaction of mortgage on any Mortgage or Substitute Mortgage.

4.6 **1281 Gulf of Mexico Drive - #801, Long Boat Key, FL**

(a) The HUSBAND and WIFE are the owners of the property located at 1281 Gulf of Mexico Drive - #801, Long Boat Key, FL (the "Long Boat Key Property").

(b) The parties will convey all their right, title and interest in and to the Long Boat Key Property to the Wife. Within thirty (30) days after the execution of this Agreement, the parties shall deliver to the WIFE a Bargain and Sale Deed with covenant against grantor's acts and duly executed and acknowledged in recordable form, conveying her interest in the Long Boat Key Property to the WIFE. From and after the execution hereof, the HUSBAND shall have no right or claim with respect to the Long Boat Key Property, its uses or proceeds in the event of a sale or other disposition thereof.

(b) The parties represent and warrant to the other that neither has placed nor caused to be placed any lien, judgment, mortgage or encumbrance on the Long Boat Key Property. Each party hereby indemnifies and holds the other harmless against any damages occasioned by such party by reason of a breach of the foregoing warranty and representation by the other, including reasonable attorneys' fees. The parties further represent that they are unaware of any lien, judgment, mortgage or encumbrance on the Long Boat Key Property.

(c) From and after the date hereof, and except as otherwise specifically provided herein, the WIFE shall be solely responsible for any and all obligations in connection with the ownership of the Long Boat Key Property, (including, without limitation,

MAUREEN O'CONNELL
NASSAU COUNTY CLERK

OFFICE OF THE COUNTY CLERK
240 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501-4249
TELEPHONE: 516 571-2660
FAX: 516 742-4099
WWW.NASSAUCOUNTYNY.GOV/AGENCIES/CLERK/

Greetings:

I am pleased to enclose your document (a deed, or mortgage, or satisfaction of mortgage), recently recorded by this office. You may want to keep this document with other important papers should you need it for future use. While the first page of the document indicates a dollar amount for recording fees, please be assured that these fees have already been paid and no funds are due.

If the enclosed document is a mortgage satisfaction and your lender previously processed the property tax payment on your behalf, it will now be necessary to contact the Receiver of Taxes for your town, village or city to advise them of your address for the purpose of receiving your future tax bill.

Again, I am pleased to provide you with the "original" recorded document. Also, be aware that should you ever need a copy, you can obtain one by coming to this office.

For additional information about the services provided by the Office of the County Clerk, visit the website at www.nassaucounty.gov/agencies/clerk.

Best regards,

Maureen O'Connell

MAUREEN O'CONNELL
Nassau County Clerk

NASSAU COUNTY CLERK'S OFFICE
ENDORSEMENT COVER PAGE

Recorded Date: 11-09-2006 Recorded Time: 11:38:39 a	Record and Return To: KENNETH KOOPERSMITH LLC 200 GARDEN CITY PLAZA STE 301 GARDEN CITY, NY 11530
Liber Book: M 31183 Pages From: 105 To: 109	

Control
Number: 1229
Ref #: CX 056833
Doc Type: M01 MORTGAGE

Location:	Section	Block	Lot	Unit
N. HEMPSTEAD (2822)	0004	0000A-00	00038	

Consideration Amount: 25,000.00

	Taxes Total	232.50
	Recording Totals	50.00
LS001	Total Payment	282.50

THIS PAGE IS NOW PART OF THE INSTRUMENT AND SHOULD NOT BE REMOVED
MAUREEN O'CONNELL
COUNTY CLERK

2006110901229

5

— First Mortgage – Individual or Corporation

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS MORTGAGE, made the 1st day of Nov. in the year 2006

BETWEEN

Stephen Walsh, the Mortgagor residing at 7 Half Moon Lane, Sands Point, New York 11050

and

Janet B. Walsh, the Mortgagee residing at 860 United Nations Plaza, NY, NY 10017

WITNESSETH, that to secure the payment of an indebtedness in the sum of

TWENTY-FIVE THOUSAND $25,000.00 dollars,

lawful money of the United States, to be paid
June 30, 2021

with interest thereon to be computed from the date hereof, at the rate of 0 per centum
~~per annum, and to be paid on the~~ ~~day of~~ ~~in the year~~ , ~~next ensuing and thereafter,~~

according to a certain bond,
note or obligation bearing even date herewith, the mortgagor hereby mortgages to the mortgagee

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Section 4, Block A, Lot 38
See schedule A

SAID PREMISES improved by one to two family dwelling.

TOGETHER with all right, title and interest of the mortgagor in and to the land lying in the streets and roads in front of and adjoining said premises;

TOGETHER with all fixtures, chattels and articles of personal property now or hereafter attached to or used in connection with said premises, including but not limited to furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, stoves, ranges, awnings, screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, plants and shrubbery and all other equipment and machinery, appliances, fittings, and fixtures of every kind in or used in the operation of the buildings standing on said premises, together with any and all replacements thereof and additions thereto;

TOGETHER with all awards heretofore and hereafter made to the mortgagor for taking by eminent domain the whole or any part of said premises or any easement therein, including any awards for changes of grade of streets, which said awards are hereby assigned to the mortgagee, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the mortgage debt, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the said mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning said awards to the mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever.

AND the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.

2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee; that he will assign and deliver the policies to the mortgagee; and that he will reimburse the mortgagee for any premiums paid for insurance made by the mortgagee on the mortgagor's default in so insuring the buildings or in so assigning and delivering the policies.

3. That no building on the premises shall be altered, removed or demolished without the consent of the mortgagee.

4. That the whole of said principal sum and interest shall become due at the option of the mortgagee: after default in the payment of any instalment of principal or of interest for fifteen days; or after default in the payment of any tax, water rate, sewer rent or assessment for thirty days after notice and demand; or after default after notice and demand either in assigning and delivering the policies insuring the buildings against loss by fire or in reimbursing the mortgagee for premiums paid on such insurance, as hereinbefore provided; or after default upon request in furnishing a statement of the amount due on the mortgage and whether any offsets or defenses exist against the mortgage debt, as hereinafter provided. An assessment which has been made payable in instalments at the application of the mortgagor or lessee of the premises shall nevertheless, for the purpose of this paragraph, be deemed due and payable in its entirety on the day the first instalment becomes due or payable or a lien.

5. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

6. That the mortgagor will pay all taxes, assessments, sewer rents or water rates, and in default thereof, the mortgagee may pay the same.

7. That the mortgagor within five days upon request in person or within ten days upon request by mail will furnish a written statement duly acknowledged of the amount due on this mortgage and whether any offsets or defenses exist against the mortgage debt.

8. That notice and demand or request may be in writing and may be served in person or by mail.

9. That the mortgagor warrants the title to the premises.

10. That the fire insurance policies required by paragraph No. 2 above shall contain the usual extended coverage endorsement; that in addition thereto the mortgagor, within thirty days after notice and demand, will keep the premises insured against war risk and any other hazard that may reasonably be required by the mortgagee. All of the provisions

TOTAL P.002

CONGRESSIONAL ABSTRACT CO., INC.

Title No. CAF-25628

SCHEDULE A

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Incorporated Village of Sands Point, Town of North Hempstead, County of Nassau and State of New York, more particularly bounded and described as follows:

BEGINNING at a point on the dividing line between property of Nicholas M. Salgo and property now or formerly of Harper-Gow Corp. Said point being in the center line of a private road and 836.63 feet southwesterly when measured along the said dividing line from a stone monument at the intersection of of the easterly end of said dividing line and the center line of a private road;

RUNNING THENCE along the center line of the first mentioned private road and the following two courses, south 10 degrees 58 minutes 50 seconds east 22.06 feet and south 27 degrees 07 minutes 23 seconds east 137.92 feet;

THENCE south 62 degrees 05 minutes 02 seconds west 422.82 feet;

THENCE north 12 degrees 57 minutes 20 seconds west 100.0 feet to the dividing line between property of Nicholas M. Salgo and property now or formerly of Harper-Gow Corp;

THENCE along said dividing line north 53 degrees 20 minutes 00 seconds east 410.11 feet to the point or place of BEGINNING.

FOR CONVEYANCING ONLY

The policy to be issued under this report will insure the title to such buildings and improvements erected on the premises which by law constitute real property.

TOGETHER with all the right, title and interest of the party of the first part, of, in and to the land lying in the street in front of and adjoining said premises.

of paragraphs No. 2 and No. 4 above relating to fire insurance and the provisions of Section 254 of the Real Property Law construing the same shall apply to the additional insurance required by this paragraph.

11. That in case of a foreclosure sale, said premises, or so much thereof as may be affected by this mortgage, may be sold in one parcel.

12. That if any action or proceeding be commenced (except an action to foreclose this mortgage or to collect the debt secured thereby), to which action or proceeding the mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by the mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by this mortgage (including reasonable counsel fees), shall be paid by the mortgagor, together with interest thereon at the rate of six per cent per annum, and any such sum and the interest thereon shall be a lien on said premises, prior to any right, or title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of this mortgage, and shall be deemed to be secured by this mortgage. In any action or proceeding to foreclose this mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

13. That the mortgagor hereby assigns to the mortgagee the rents, issues and profits of the premises as further security for the payment of said indebtedness, and the mortgagor grants to the mortgagee the right to enter upon and to take possession of the premises for the purpose of collecting the same and to let the premises or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of said indebtedness. This assignment and grant shall continue in effect until this mortgage is paid. The mortgagee hereby waives the right to enter upon and to take possession of said premises for the purpose of collecting said rents, issues and profits, and the mortgagor shall be entitled to collect and receive said rents, issues and profits until default under any of the covenants, conditions or agreements contained in this mortgage, and agrees to use such rents, issues and profits in payment of principal and interest becoming due on this mortgage and in payment of taxes, assessments, sewer rents, water rates and carrying charges becoming due against said premises, but such right of the mortgagor may be revoked by the mortgagee upon any default, on five days' written notice. The mortgagor will not, without the written consent of the mortgagee, receive or collect rent from any tenant of said premises or any part thereof for a period of more than one month in advance, and in the event of any default under this mortgage will pay monthly in advance to the mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of said premises or of such part thereof as may be in the possession of the mortgagor, and upon default in any such payment will vacate and surrender the possession of said premises to the mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings.

14. That the whole of said principal sum and the interest shall become due at the option of the mortgagee: (a) after failure to exhibit to the mortgagee, within ten days after demand, receipts showing payment of all taxes, water rates, sewer rents and assessments; or (b) after the actual or threatened alteration, demolition or removal of any building on the premises without the written consent of the mortgagee; or (c) after the assignment of the rents of the premises or any part thereof without the written consent of the mortgagee; or (d) if the buildings on said premises are not maintained in reasonably good repair; or (e) after failure to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the premises within three months from the issuance thereof; or (f) if on application of the mortgagee two or more fire insurance companies lawfully doing business in the State of New York refuse to issue policies insuring the buildings on the premises; or (g) in the event of the removal, demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, unless the same are promptly replaced by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from chattel mortgages or other encumbrances thereon and free from any reservation of title thereto; or (h) after thirty days' notice to the mortgagor, in the event of the passage of any law deducting from the value of the land for the purposes of taxation any lien thereon, or changing in any way the taxation of mortgages or debts secured thereby for state or local purposes; or (i) if the mortgagor fails to keep, observe and perform any of the other covenants, conditions or agreements contained in this mortgage.

15. That the mortgagor will, in compliance with Section 13 of the Lien Law, receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

16. That the execution of this mortgage has been duly authorized by the board of directors of the mortgagor.16. That the execution of this mortgage has been duly authorized by the board of directors of the mortgagor.

This mortgage may not be changed or terminated orally. The covenants contained in this mortgage shall run with the land and bind the mortgagor, the heirs, personal representatives, successors and assigns of the mortgagor and all subsesquent owners, encumbrancers, tenants and subtenants of the premises, and shall enure to the benefit of the mortgagee, the personal representatives, successors and assigns of the mortgagee and all subsequent holders of this mortgage. The word "mortgagor" shall be construed as if it read "mortgagors" and the word "mortgagee" shall be construed as if it read "mortgagees" whenever the sense of this mortgage so requires.

IN WITNESS WHEREOF, this mortgage has been duly executed by the mortgagor.

11/1/06

IN PRESENCE OF:

[signature]

STEPHEN WALSH

[signature]

Gary Henn.tt 11/1/06

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of NASSAU, ss:

On the 1ST day of NOV in the year 2006, before me, the undersigned, personally appeared STEPHEN WALSH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

EILEEN P. RAJECKI
Notary Public, State Of New York
No. 30-4761814
Qualified In Nassau County
Commission Expires March 30, 2010

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of , ss:

On the day of in the year , before me, the undersigned, personally appeared

, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

ACKNOWLEDGEMENT BY SUBSCRIBING WITNESS TAKEN IN NEW YORK STATE

State of New York, County of , ss:

On the day of in the year , before me, the undersigned, a Notary Public in and for said State, personally appeared , the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in

(if the place of residence is in a city, include the street and street number if any, thereof);

that he/she/they know(s)

to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said

execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto

ACKNOWLEDGEMENT TAKEN OUTSIDE NEW YORK STATE

*State of , County of , ss:

*(Or insert District of Columbia, Territory, Possession or Foreign County)

On the day of in the year , before me the undersigned personally appeared

Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual make such appearance before the undersigned in the

(add the city or political subdivision and the state or country or other place the acknowledgement was taken).

First Mortgage

Title No.[redacted]

WALSH
TO
WALSH

SECTION: 4
BLOCK: A
LOT: 38
COUNTY OR TOWN: North Hempstead

DISTRIBUTED BY
YOUR TITLE EXPERTS
The Judicial Title Insurance Agency LLC
800-281-TITLE (8485) FAX: 800-FAX-9396

RETURN BY MAIL TO:

[redacted]

LAW OFFICES OF
KENNETH KOOPERSMITH, LLC
200 GARDEN CITY PLAZA, SUITE 301
GARDEN CITY, NY 11530

Standard N.Y.B.T.U. Form 8011-10M Mortgage Note, Individual or Corporation, (Straight or Instalment.)
CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT — THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY

MORTGAGE NOTE

$ 25,000 New York, November 1, 2006

FOR VALUE RECEIVED,

STEPHEN WALSH, the Mortgagor

promise to pay to

JANET B. WALSH, the Mortgagee.

or order, at

or at such other place as may be designated in writing by the holder of this note, the principal sum of

TWENTY-FIVE THOUSAND ($25,000) Dollars

with interest thereon to be computed from the date hereof, at the rate of 0 per centum ~~per annum and to be paid on the day of 10 , next ensuing~~ and

IT IS HEREBY EXPRESSLY AGREED, that the said principal sum secured by this note shall become due at the option of the holder thereof on the happening of any default or event by which, under the terms of the mortgage securing this note, said principal sum may or shall become due and payable; also, that all of the covenants, conditions and agreements contained in said mortgage are hereby made part of this instrument.

Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived.

This note is secured by a mortgage made by the maker to the payee of even date herewith, on property situate in the

This note may not be changed or terminated orally.

STEPHEN WALSH 11/1/06

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of Nassau , ss:

On the 1ST day of Nov in the year 2006 before me, the undersigned, personally appeared STEPHEN WALSH , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

EILEEN P. RAJECKI
Notary Public, State Of New York
No. 30-4761814
Qualified In Nassau County
Commission Expires March 30 20__

NOTARY PUBLIC

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of , ss:

On the day of in the year , before me, the undersigned, personally appeared

, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

ACKNOWLEDGEMENT BY SUBSCRIBING WITNESS TAKEN IN NEW YORK STATE

State of New York, County of , ss:

On the day of in the year , before me, the undersigned, a Notary Public in and for said State, personally appeared , the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in

(if the place of residence is in a city, include the street and street number if any, thereof); that he/she/they know(s)

to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said

execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto

ACKNOWLEDGEMENT TAKEN OUTSIDE NEW YORK STATE

*State of , County of , ss:
*(Or insert District of Columbia, Territory, Possession or Foreign County)

On the day of in the year , before me the undersigned personally appeared

Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual make such appearance before the undersigned in the

(add the city or political subdivision and the state or country or other place the acknowledgement was taken).

Mortgage Note

TITLE NO.

STEPHEN WALSH

WITH

JANET B. WALSH

STANDARD FORM OF NEW YORK BOARD OF TITLE UNDERWRITERS
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CHICAGO TITLE INSURANCE COMPANY

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AFFIRMATION OF SERVICE

I, John J. O'Donnell, affirm under penalty of perjury as follows:

1. I am an Assistant United States Attorney in the Southern District of New York.

2. On April 8, 2011, I caused a copy of the foregoing document to be filed and served via the Court's ECF system to the following:

Glenn C. Colton,Esq.
Sonnenschein Nath & Rosenthal LLP
1221 Avenue of the Americas
New York, NY 10020-1089
Direct: 212.398.5797
Mark A. Flessner, Esq.
Sonnenschein Nath & Rosenthal LLP
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Direct: 312.876.3136
Attorneys For Defendant Stephen Walsh

Dated: New York, New York
April 8, 2011

JOHN J. O'DONNELL
Assistant United States Attorney
(212) 637-2490